IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P.NO.2587 OF 2004

Mrudula B.Patel ..Petitioner

Vs.

Verve Investment & Finance Pvt.Ltd.& Anr. ..Respondents

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Mr.S.V.Marvadi Advocate for Petitioner
Ms.S.V.Gajare A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 14, 2005

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The matter came to be dismissed for non-removal of office objection i.e. spare copies were not applied to the respondent-original complainant. However, it is seen that by order dated 30.3.2005 this Court had issued notice to respondent and had granted permission to the petitioner to given advocates notice. Mr.Marwadi submitted that

accordingly, advocate's notice was given, hence, the spare copy was not supplied. The document in relation to the service on the respondents is tendered which is taken on record and marked as 'X' for identification. Hence, it appears that the matter was wrongly disposed of for non-removal of office objection. Accordingly, the matter is restored to file.

3. The petitioner is seeking quashing of proceedings relating to Criminal Case No.896/A/S/96 pending before the learned Chief Metropolitan Magistrate, 37th Court, Esplanade, Mumbai. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act. The learned advocate for the petitioner submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. It is further submitted that if the process issued against the petitioner is set aside, the proceedings in respect of the petitioner, would come to an end.

4. For the reasons recorded in the decision of

this Court in the case of **V.K.Jain and others Vs. Pratap V. Padode reported in 2005(3) Mh.L.J.778,** I am of the opinion that the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the petitioner to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioner makes a statement that the necessary revision will be preferred within four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks.

6. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

7. It is stated on behalf of the petitioner that in the said case, NBW came to be issued against the petitioner. It is prayed that the said NBW be quashed. I am not inclined to quash NBW as in my opinion, it would be appropriate that the petitioner prefers application before the trial Court for setting aside the said NBW.

. Liberty is granted to the petitioner to prefer the necessary application. The learned advocate for the petitioner states that the necessary application will be preferred within six weeks from today. In order to enable the petitioner to take necessary steps for setting aside NBW, the said NBW is stayed for a period of six weeks from today.

8. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]